

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,197

IN THE MATTER OF:

Served November 14, 2014

EXPRESS TRANSIT, LLC, Suspension       )  
and Investigation of Revocation of       )  
Certificate No. 1644                        )

Case No. MP-2013-149

This matter is before the Commission on respondent's response to Order No. 14,817, served June 5, 2014, which, among other things, gave respondent 30 days to show cause why the Commission should not assess a civil forfeiture against respondent and/or suspend or revoke Certificate No. 1644.

**I. BACKGROUND**

Certificate No. 1644 was automatically suspended on December 16, 2013, pursuant to Regulation No. 58-12, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 14,411, served December 16, 2013, noted the automatic suspension of Certificate No. 1644, directed respondent to cease transporting passengers for hire under Certificate No. 1644, and gave respondent 30 days to replace the terminated endorsement and pay the \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1644.

Respondent paid the late fee and submitted \$1 million primary and \$500,000 excess WMATC Insurance Endorsements, and the suspension was lifted in Order No. 14,457 on January 6, 2014, but because the effective date of the new endorsements is January 3, 2014, instead of December 16, 2013, the order gave respondent 30 days to verify cessation of operations as of December 16, 2013, as corroborated by copies of respondent's pertinent business records, in accordance with Regulation No. 58-14. Respondent did not respond.

Because respondent had not denied operating its vehicle(s) on and after the suspension date, and because respondent had failed to produce the required documents, Order No. 14,817 gave respondent until July 7, 2014, to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 1644, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

And because the Commission discovered that respondent's sole vehicle, a 2014 Ford Taurus, was registered to respondent's president, Charles Revell, but no lease was on file with the Commission as

required by WMATC Regulation No. 62, the order also gave respondent 30 days to bring its operations into compliance with Regulation No. 62.

## **II. RESPONSE TO ORDER NO. 14,817**

The record shows that respondent is now in compliance with Regulation No. 62, having filed an acceptable lease for applicant's sole vehicle, the Ford Taurus registered in the name of respondent's president.

The record further shows that respondent has belatedly responded to the requirement in Order No. 14,457, that respondent produce records "which relate to the transportation of passengers for hire between points in the Metropolitan District during the period beginning October 1, 2013, and ending on [January 6, 2014]." In response to that requirement, respondent has produced "Payment Detail Report[s]" from LogistiCare Solutions, LLC, which respondent identifies as its "only contractor and revenue source for transporting passengers in the State of Maryland." According to those reports, respondent transported a passenger for LogistiCare on December 16, 2013, while suspended and uninsured.

## **III. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY**

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>1</sup>

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.<sup>2</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>3</sup> The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard of whether or not one has the right so to act.<sup>4</sup> Employee negligence is no defense.<sup>5</sup> "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.<sup>6</sup>

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<sup>1</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>2</sup> Compact, tit. II, art. XI, § 10(c).

<sup>3</sup> *In re Couples, LLC, t/a Couples Limos.*, No. MP-09-134, Order No. 12,330 at 3 (Mar. 8, 2010).

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

Under Regulation No. 58-12: "Failure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority. The carrier must suspend operations immediately and may not recommence operations unless and until otherwise ordered by the Commission." Under Regulation No. 58-11:

When a WMATC carrier's insurance has terminated or is about to terminate the carrier must contact the Commission to ascertain whether the necessary WMATC Insurance Endorsement has been filed before continuing to operate on and after the termination date. Proof a WMATC carrier has satisfied its duty to verify shall consist of contemporaneous written verification from the Commission.

There is no evidence in the record indicating that respondent contacted the Commission to ascertain whether the necessary WMATC Insurance Endorsement had been filed before operating on December 16, 2013.<sup>7</sup>

When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority.<sup>8</sup> They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.<sup>9</sup>

We shall revoke Certificate No. 1644 and assess a forfeiture against respondent in the amount of \$500 per day, or \$500, for knowingly and willfully operating on one day while suspended and uninsured.<sup>10</sup>

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$500 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

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<sup>7</sup> The record shows that respondent declined to renew coverage last year under Knightbrook policy no. MDPA-00026-02, which expired December 16, 2013. Instead, respondent instructed its broker to renew coverage as of January 1, 2014, despite a warning from the broker that the renewal date was December 16, 2013, not January 1, 2014. Respondent did not renew coverage until January 3, 2014. A representative from Knightbrook has informed WMATC that they will not backdate coverage under current policy no. 150005299.

<sup>8</sup> Compact, tit. II, art. XI, § 7(g).

<sup>9</sup> Order No. 12,330 at 4.

<sup>10</sup> See Order No. 12,330 (revoking authority and assessing \$500 per day against carrier that operated while suspended and underinsured).

2. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 1644 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

3. That within 30 days from the date of this order respondent shall:

- a. pay to the Commission by money order or check, the sum of five hundred dollars (\$500);
- b. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- c. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- d. surrender Certificate No. 1644 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BROWN:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', is positioned above the printed name.

William S. Morrow, Jr.  
Executive Director